

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CAROL EVANGELISTA,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

CIVIL NO. 04-40143-NMG

GOVERNMENT'S MOTION TO CONTINUE TIME TO RESPOND

Petitioner Carol Evangelista has filed a Motion to Vacate, Set Aside, Or Correct Sentence By A Person In Federal Custody, pursuant to 28 U.S.C. §2255. Evangelista's motion is based on the recent case of Blakely v. Washington, 124 S.Ct. 2531 (2004). Evangelista asserts in her motion that the facts supporting the guideline enhancements imposed by the Court for the amount of loss and because her offense involved a misrepresentation or other fraudulent action during a bankruptcy proceeding "were neither mentioned during her plea colloquy nor proved to a jury beyond a reasonable doubt." Motion at ¶8. On September 9, 2004, the Court entered an Order requiring the government to respond to Evangelista's Order within 20 days, or September 29, 2004. The government now requests an additional 30 days to file its response, to October 29, 2004. In support of this motion, the government states as follows:

On September 9, the day the Court's Order was received, the

attorney for the government requested the case file from storage. That file was received on Monday, September 13. Contrary to Evangelista's assertion, the government attorney's notes reflect that the facts supporting the two contested enhancements were described in open court during the plea colloquy and that Evangelista told the Court that she did not disagree with those facts. Those notes also reflect that during the sentencing hearing, Evangelista conceded that the intended loss caused by her offense was \$94,500. The notes do not reflect whether or not Evangelista also conceded the enhancement for a misrepresentation or other fraudulent action in a bankruptcy proceeding.

Since Evangelista's factual admissions during the plea hearing and the issues she either contested or conceded at sentencing are central to her claim for relief, a transcript of those proceedings will be needed. The government today contacted the court reporter and ordered the transcripts for both the plea and sentencing hearings.¹ However, the court reporter advised that because of other obligations, including a two-week civil trial beginning today, she will need at least until October 4 to complete both transcripts. In addition, the attorney for the government is scheduled to start a 1-2 week criminal trial on October 5 before this court in the case of United States v.

¹ Evangelista had not previously ordered either transcript, despite the fact that her motion contains factual allegations about matters which occurred during those proceedings.

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For all the above reasons, the government requests an additional 30 days to October 29 to respond to Evangelista's motion.

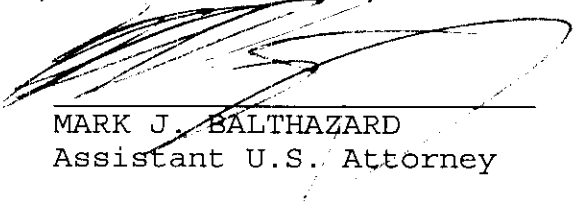
Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: _____
MARK J. BALTHAZARD
Assistant U.S. Attorney

Certificate of Service

I hereby certify that I caused a copy of the above document to be served by mail on petitioner's attorney of record, Peter L. Ettenberg, Gould & Ettenberg, P.C., 370 Main Street, Worcester, MA 01608 on September 13, 2004.



MARK J. BALTHAZARD
Assistant U.S. Attorney